

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

11	MONTEREY BAY BOATWORKS)	Case No.: 12-CV-4544-LHK
12	COMPANY, a California limited partnership,)	ORDER ISSUING WARRANT FOR THE
13	Plaintiff,)	ARREST OF THE M/V WILD WAVE
14	v.)	
15	MICHAEL FORMICO, and M/V WILD WAVE)	
16	(Official Number 550855) and her engines,)	
	boiler, tackle, apparel, furnishings, and)	
	appurtenances, etc., <u>in rem</u> ,)	
17	Defendants.)	

On August 30, 2012, Plaintiff Monterey Bay Boatworks Co. (“Plaintiff”) filed a verified complaint (“Complaint”) seeking the arrest of the vessel M/V WILD WAVE (Official Number 550855) and her engines, boilers, tackle, apparel, furnishings, appurtenances, etc.... ECF No. 1. Plaintiff’s also filed an application for a warrant to execute the arrest. ECF No. 5. As set forth in Plaintiff’s Complaint, in July 2011, Plaintiff entered into an agreement with Defendant Michael Formico (“Formico”) for services to be rendered to the M/V WILD WAVE at the Plaintiff’s Monterey Bay Boatyard. *See* Complaint, Ex. A (“Services Agreement”). Since the Services Agreement was executed, Formico has accumulated over \$50,000 in fees for parts, labor, and storage (“lay days”). Declaration of Michael Maiorana in Support of the Application for Issuance of Warrant of Arrest of Vessel, ECF No. 5-2 (“Maiorana Decl.”), ¶¶ 2-4; Compl., Ex. B (Monterey Bay Boatworks Co. Balance Sheet). As of August 28, 2012, Plaintiff has only made one payment

1 of \$3,000. Maiorana Decl., ¶ 4. Plaintiff's current outstanding balance is \$53,924.12. Plaintiff
2 alleges that, if the Court does not issue a warrant for the arrest of the M/V WILD WAVE and its
3 appurtenances, "Plaintiff may lose the opportunity to regain possession [of the M/V WILD
4 WAVE] due to the inherent mobility of the vessel." Declaration of Cory A. Bernberg in Support of
5 the Application for Issuance of Warrant of Arrest of Vessel, ECF No. 5-1, ¶ 4.

6 Under Federal Rule of Civil Procedure, Supplemental Rule for Certain Admiralty and
7 Maritime Claims C, an action in rem may be brought to enforce any maritime lien. See Fed. R.
8 Civ. Proc., Suppl. R. C(1). 46 U.S.C.A. § 31342 provides that a "person providing necessities to a
9 vessel on the order of the owner or a person authorized by the owner... has a maritime lien on the
10 vessel." "[N]ecessaries" includes repairs, supplies, towage, and the use of a dry dock or marine
11 railway." 46 U.S.C.A. § 31301.

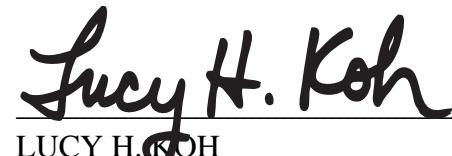
12 A complaint filed pursuant to Federal Rule of Civil Procedure, Supplemental Rule for
13 Certain Admiralty and Maritime Claims C must be verified, describe with reasonable particularity
14 the property that is the subject of the action, and state that the property is within the district or will
15 be within the district while the action is pending. See Fed. R. Civ. Proc., Suppl. R. C(2). Before
16 issuing an arrest warrant, the court must review the complaint and any supporting papers, and if the
17 conditions for an in rem action appear to exist, the court must issue an order directing the clerk to
18 issue a warrant for the arrest of the vessel or other property that is the subject of the action. Fed. R.
19 Civ. Proc., Suppl. R. C(3)(a)(i). The Advisory Committee Note on the Amendments to Rules, 105
20 F.R.D. 179, 233 (1985), contemplates "a simple order with conclusory findings" determining
21 whether the plaintiff has made a *prima facie* showing that the action in rem is warranted.

22 Plaintiffs have adequately alleged the conditions for an in rem action with regard to the
23 M/V WILD WAVE and her engines, boilers, tackle, apparel, furnishings, appurtenances, etc..., and
24 have provided: (1) a verified complaint; (2) the sworn declaration of Michael Maiorana attesting
25 that Formico owes Plaintiff \$53,924.12 for necessities including storage, parts, and labor provided
26 to the M/V WILD WAVE (Maiorana Decl., ¶¶ 2-4); and (3) documentation detailing Formico's
27 debt (Compl., Exs. A, B). Moreover, Plaintiffs have stated that the M/V WILD WAVE is currently
28 within this district in a boat slip at the Monterey Boatyard.

1 Thus, the Court hereby GRANTS Plaintiffs' Ex Parte Application for an Order Issuing
2 Warrant for the Arrest of the M/V WILD WAVE, and ISSUES A WARRANT for the ARREST of
3 the M/V WILD WAVE (Official Number 550855).

4 **IT IS SO ORDERED.**

5 Dated: September 19, 2011



LUCY H. KOH

6 United States District Judge